UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF VIRGINIA
401 COURTHOUSE SQUARE
ALEXANDRIA, VIRGINIA 22314-5799

CHAMBERS OF LIAM O'GRADY UNITED STATES DISTRICT JUDGE

TELEPHONE: (703) 299-2121 FACSIMILE: (703) 299-3379

August 25, 2020

Mr. Brian Regan #41051-083 Federal Correctional Institute - Hazelton Post Office Box 5000 Bruceton Mills, WV 26525

RE:

United States v. Regan

Cr. Case 1:01-405

Dear Mr. Regan:

The court received your letter of July 18, 2020 in which you state that the transcript of your sentencing hearing was transcribed inaccurately in many instances. The Court sees that as a serious allegation, and for that reason I asked a second, independent court reporter to retrieve the tapes of your hearing again, and transcribe the hearing a second time.

Enclosed you will find the second transcript. You will note three highlighted words from the original transcript that were heard by the second reporter differently than by the first reporter. They are highlighted to show you the difference. As you can see, the differences are minimal and make no change in the meaning or context of the statements.

I hope this clarifies your concerns.

Vety truly yours,

Liam O'Grady

LOG:dw

Enclosure

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF VIRGINIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

March 20, 2003

BRIAN P. REGAN,

Defendant.

TRANSCRIPT OF SENTENCING PROCEEDINGS BEFORE THE HONORABLE GERALD B. LEE, UNITED STATES DISTRICT COURT JUDGE

APPEARANCES:

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Transcript

Transcribed by:

Scott L. Wallace, RDR, RMR, CRR

Official Court Reporter

United States District Court

401 Courthouse Square Alexandria, VA 2231-5798

703.549.4626

Scottwallace.edva@gmail.com

Proceedings reported by machine shorthand, transcript produced by computer-aided transcription.

PROCEEDINGS

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THE COURTROOM CLERK: This is the *United States of America* versus Brian Regan.

5 MS. HAYNES: Patricia Haynes, James Gillis and Steve Doyle 6 on behalf of the United States.

THE COURT: Good afternoon.

MR. McCARTHY: Good afternoon, Your Honor.

THE COURT: Good afternoon.

MR. McCARTHY: Nina Ginsberg, John Shapiro, and Joe McCarthy for Mr. Regan, Your Honor.

THE COURT: Good afternoon. Good afternoon, Mr. Regan.

MS. HAYNES: Your Honor, the parties have reached a proposed sentencing agreement in this case that's been provided to the Court, and we do have a copy that has been signed by all the parties.

THE COURT: All right. Mr. Regan, if you would come to the podium with your counsel, please.

Mr. Regan, I understand that you agree to a life sentence in this case; is that right?

THE DEFENDANT: Yes, Your Honor.

THE COURT: I want to go over with you this sentencing agreement that you've signed to make sure that you understand your rights and that you have been informed of your rights and you understand the consequences of this agreement. What I would

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like to do is to tell you first, if you don't understand my
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     questions, please let me know. And if at any time you don't
     understand me, please tell me. And if at any time you would like
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     to speak to your lawyer about the statement, please let me know,
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5
     okay?
6
           All right. What is your full name?
           THE DEFENDANT: Brian Patrick Regan.
7
           THE COURT: And Mr. Regan, how old are you?
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9
           THE DEFENDANT:
                           Forty.
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           THE COURT: And can you read and write?
           THE DEFENDANT: Yes.
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           THE COURT: How far did you go in school?
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           THE DEFENDANT: Three years of college.
           THE COURT: And what did you study in college?
14
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           THE DEFENDANT: Computer science.
           THE COURT: All right. Have you taken any drugs or
16
     alcohol before coming to court today?
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           THE DEFENDANT: No, sir.
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           THE COURT: And are you under the care of a psychiatrist?
           THE DEFENDANT:
20
                           No.
           THE COURT: Are you receiving any psychotropic drugs of
21
22
     any kind?
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           THE DEFENDANT: Yes.
           THE COURT: What psychotropic drugs are you receiving?
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           THE DEFENDANT: Prozac and anti-psychotic.
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           THE COURT: All right. And what is the reason you're
     receiving anti-psychotic medication?
2
           THE DEFENDANT:
                           Depression.
3
           THE COURT: Depression? Okay. And are you being treated
4
     in the detention center for the depression?
5
           THE DEFENDANT: Yes, sir.
6
 7
           THE COURT: All right. And what medication have you had
     today before coming to court?
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           THE DEFENDANT: Nothing.
           THE COURT: Nothing? Okay. And I take it that you and
10
     your lawyers have had a chance to meet to discuss this sentencing
11
     agreement before today; is that right?
12
           THE DEFENDANT: That's correct.
13
           THE COURT: And how many times did you meet with your
14
     lawyers about this sentencing agreement?
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           THE DEFENDANT:
                           Three times.
           THE COURT: Three times? Okay. Now, have you had ample
17
     time to discuss the sentencing agreement with your lawyers?
18
           THE DEFENDANT: Yes.
19
20
           THE COURT: And have you reviewed it with them in detail?
           THE DEFENDANT:
                           Yes.
21
22
           THE COURT: And have you had time to think about it?
23
           THE DEFENDANT:
                           Yes.
           THE COURT: And you're prepared to enter into it?
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            THE DEFENDANT: Yes.
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           THE COURT: Now, are you satisfied with the work your
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     lawyers have done for you in this case?
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           THE DEFENDANT:
                           Yes.
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           THE COURT: And do you believe you told them everything
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     that you know about the case before the case went to trial?
6
           THE DEFENDANT: Yes.
 7
           THE COURT: And posttrial, have you told them everything
     that you wanted to tell them about the case?
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9
           THE DEFENDANT: Yes.
10
           THE COURT: All right. And do you feel that your lawyers
     have adequately represented you in this case?
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           THE DEFENDANT: Yes.
12
           THE COURT: Do you have any complaint about them at all?
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           THE DEFENDANT: No.
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           THE COURT: Now, I have a document in front of me called
     Sentencing Agreement. What I would like to do is go over certain
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     parts of it with you. It is 14 pages long, and it appears to be
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     signed by you on page 12, and I'm displaying it to you now. Is
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19
     that your signature on page 12 of this agreement?
           THE DEFENDANT: Yes.
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21
           THE COURT: And have you had time to review the agreement
22
     with your lawyers?
23
           THE DEFENDANT: Yes.
           THE COURT: Let's start with page 1, paragraph 1 because
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     that tells me what you've agreed to do in this case. And page 1,
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paragraph 1 says the defendant agrees that his conviction in this
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     matter with regard to Count 1 -- Counts 1, 3 and 4 of the
     superseding indictment were lawful and supported by the evidence
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     presented at trial. As a result and in return for the
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     concessions made by the United States in this agreement, the
     defendant knowingly agrees -- knowingly agrees to waive any and
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     all rights he possesses: One to appeal his conviction in this (4 \text{ (B)})
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     matter pursuant to Rule 4(b) of the Federal Rules of Appellate
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                               [whatsoever]
9
     Procedure on any grounds whatever; and two, to appeal any
     sentence within a maximum provided in the statute of convictions
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     pursuant to 18 United States Code Section 3742 on any ground
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     [whatsoever]
     whatever; and three, to collaterally attack the conviction of
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     sentence in this matter pursuant to 28 U.S. Code Section 2255 or
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14
     otherwise.
            Sir, do you understand that by signing this sentencing
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     agreement you're agreeing not to contest any legal issues that --
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     any legal issues that may have been derived from your trial in
17
     the case?
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            THE DEFENDANT: Yes.
20
            THE COURT: And this says that there won't be a review of
21 .
     the case by the United States Court of Appeals for the Fourth
22
     Circuit or the Supreme Court. Do you understand that?
23
            THE DEFENDANT: Yes.
            THE COURT: And it says here that you've also agreed to
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     waive your right to appeal any sentence on any ground and also to
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waive your right to bring a particular writ of habeas corpus
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2
     under 2255. Do you understand that?
           THE DEFENDANT: Yes.
3
           THE COURT: Now, these are rights you would have if you
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     did not enter into this agreement. You would have the right to
     obviously appeal this case to the United States Court of Appeals
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 7
     for the Fourth Circuit and to the United States Supreme Court.
     Do you understand that?
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           THE DEFENDANT: Yes.
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           THE COURT: Now, paragraph 4 discusses the life sentence
11
     that I just mentioned to you.
           Now, have you discussed with your lawyer that life means
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     life? That means from now on. Do you understand that?
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           THE DEFENDANT: Yes.
           THE COURT: It's natural life. There's no parole, there's
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     no coming back later on. Do you understand that?
           THE DEFENDANT: Yes.
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           THE COURT: That's set forth in paragraph 5.
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           Now, paragraph 8 discusses your rights and survivor
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     annuity, and it bears a discussion here in paragraph 8 that you
     are agreeing to immediate forfeiture of your military retirement,
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     except for that portion of your military retirement which is the
22
     equivalent to a spousal survivor annuity, which you are assigning
23
     to your wife. Do you understand that?
24
            THE DEFENDANT: Yes.
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THE COURT: Now, that is dependent, it says here, that -it says the defendant understands that his wife will receive any
portions of the military retirement pay dependent on her
continued full cooperation, and he agrees that if the United
States determines that his wife has failed to continue her full
cooperation, the defendant will, upon request of the United
States, execute a consent order of forfeiture covering his entire
military retirement, including that portion not previously
subject to this forfeiture. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: So, basically what that means is your wife has agreed to provide truthful information to the government and to cooperate with the government and to continue that, and as long as she has done that within the satisfaction of the government, then the government will not seek to forfeit the equivalence of that spousal survivor annuity. Do you understand that?

THE DEFENDANT: Yes.

THE COURT: Paragraph 9 refers to what I just said a moment ago, and paragraph 10 discusses an agreement the government has made with you not to prosecute your wife for obstruction of justice related to the charges in the superseding indictment before the execution of this agreement.

So, in essence, in this case your plea -- you're entering into this sentencing agreement, in effect -- part of the consideration that you are receiving here is a statement from the

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government that they will not seek to prosecute your wife for
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     obstruction of justice relating to the charge in the indictment.
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     Do you understand that?
           THE DEFENDANT: Yes.
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           THE COURT: And obviously the Court does not have any
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     control over your wife. The only matter before the Court is your
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     involvement in this particular case. There's also a discussion
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     of special administrative measures, which I think is
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     self-explanatory. That is to say that it is always up to the
 9
     Attorney General and the Bureau of Prisons to make their own
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     judgment about what's appropriate with respect to your
11
     confinement. Do you understand that?
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13
           THE DEFENDANT:
                           Yes.
            THE COURT: And the government here has not promised that
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     they're going to acree to whatever special administrative
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     measures you prefer, it's going to be entirely up to the Bureau
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     of Prisons with a recommendation that's set forth in paragraph
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     12. Do you understand that?
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            THE DEFENDANT: Yes.
            THE COURT: Now, there are terms of cooperation which are
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     in paragraph 13, and I don't think I'll read them aloud, but you
21
     have paragraph 13 in front of you?
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23
            THE DEFENDANT: Yes.
            THE COURT: Okay. Well, 13(B) places an obligation on
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     you, and you're prepared to make that obligation?
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THE DEFENDANT:
                           Yes.
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           THE COURT: And have you started on that already?
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           THE DEFENDANT:
                           No.
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           THE COURT: No? Okay. Now, subparagraph H, it's fairly
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     critical, just like paragraph B, because it discusses the
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     duration of your commitment, and it says it's a lifetime
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     commitment. Do you understand what that means?
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            THE DEFENDANT: Yes.
 8
            THE COURT: And that you are fully responsible for
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     carrying out your obligations under paragraph 13?
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           THE DEFENDANT: Yes.
11
            THE COURT: Now, paragraph 14 of this sentencing agreement
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     says that what you're receiving for this sentencing agreement is
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     an agreement about sentence, and this agreement as it affects
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     your spouse and her not being prosecuted for obstruction of
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     justice, but the government here is not promising to you or
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     telling you that they're going to come back to court at any
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     future time seeking any reduction in your sentence because of the
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     cooperation you offer here. Do you understand that?
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            THE DEFENDANT: Yes.
20
            THE COURT: Paragraph 15 also requires you to make -- to
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     forfeit any assets or money that is traceable to your espionage
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     activity, whether it's located here or in some other country, and
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     you're prepared to carry that out as well; is that right?
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            THE DEFENDANT: Yes.
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THE COURT: Paragraph 20, which is on page 8, discusses nondisclosure agreements, and I'm sure that your counsel has gone over this with you in great detail. The essence of paragraph 20 and 21 are that you acknowledge that you have in the past and that you remain bound by nondisclosure agreements not to disclose classified information to anyone under any circumstances, and that you should not participate in any activity that would result in disclosure of classified information. Do you understand that? THE DEFENDANT: Yes. THE COURT: Paragraph 21, 23 and 24, again, all deal with the issue of disclosure of information to anyone, including any potential media contacts or individuals who may be involved with production of any books, writings, songs or other information about your involvement in this case and your activity leading up to your arrest and conviction in this case, and have you fully discussed those with your lawyers?

THE DEFENDANT: Yes.

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THE COURT: And you understand that you're not to disclose classified information under any circumstances to any of those individuals or anyone else at any time from now on?

THE DEFENDANT: Yes.

THE COURT: And paragraph 25 also deals with the issue of if, for some reason, there were possible publication of any kind, whether they were media or print or electronic or otherwise, information that somehow results in some profits, that you would

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this sentencing agreement?

forfeit that profit or the proceeds, and you would not assist family members or others in trying to acquire proceeds or profits from that activity. Do you understand that? THE DEFENDANT: Yes. THE COURT: There's also a restriction of your contact with any foreign government or foreign powers, and I take it you discussed that with your lawyers as well, and you understand that that means while you're detained that you are not to try to initiate contact or have contact with anyone from any foreign government? THE DEFENDANT: Yes. THE COURT: And Mr. Regan, do you understand that by signing this agreement, the rights that you're giving away, the right to appeal and the right to bring a claim for habeas corpus, these are rights you otherwise would be entitled to, and that you're surrendering those rights in exchange for the things that are set forth in the agreement, the things that I have mentioned and the things I have not mentioned? Do you understand that? THE DEFENDANT: Yes. THE COURT: Now, has anyone threatened you or forced you to you enter into this agreement? THE DEFENDANT: No. THE COURT: Has anyone made any promise to you that you will receive something other than what's set forth in writing in

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THE DEFENDANT: No.
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           THE COURT: Have you had time to consult with your wife
     about the wisdom of entering into this agreement such that it
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     mentions her and certain impacts that that will have on her and
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     the survivor annuity?
           THE DEFENDANT: No.
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           THE COURT: But you -- this is something that you want to
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     do?
           THE DEFENDANT: I'm doing it to protect my wife and
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     children.
           THE COURT: You understand that the terms of this
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     agreement are that if I accept it, that I'm going to impose a
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     sentence of life and that will be the end of your case? Do you
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14
     understand that?
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           THE DEFENDANT: Yes.
           THE COURT: And you're prepared to do that now?
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           THE DEFENDANT: Yes.
           THE COURT: All right. Well, I've asked you a lot of
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     questions. Have you understood my questions?
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           THE DEFENDANT: Yes, sir.
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           THE COURT: Do you have any questions for me?
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           THE DEFENDANT: No, sir.
           THE COURT: Mr. McCarthy, have you all reviewed this
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     agreement with Mr. Regan?
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           MR. McCARTHY: Yes, Your Honor.
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THE COURT: And he mentioned that there are at least three
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     occasions that you all discussed it; is that right?
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           MR. McCARTHY: At least three, Your Honor.
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           THE COURT: At least three. And would you mind telling me
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     over what period of time you all had these consultations about
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     this agreement?
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           MR. McCARTHY: With regard to this specific version,
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     within the past ten days I think I've met with Brian on three
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     different occasions at the detention center.
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           THE COURT: All right. And were there times in-between
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     the consultation before you came back so you would have time to
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     think about it?
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           MR. McCARTHY: After discussions with the government, I
     would relay to Mr. Regan the position the government was taking
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     and would come back and see him face-to-face.
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           THE COURT: All right. And how long has he had this
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     particular sentencing agreement?
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           MR. McCARTHY: Probably Monday is when I got it, and I
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     went over it with Mr. Regan at the detention center then.
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           THE COURT: On Monday.
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           MR. McCARTHY: The beginning of the week.
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            THE COURT: And today is Thursday, so he's had those three
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23
     days to further reflect upon it?
           MR. McCARTHY: And we read it together when I first got
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     it.
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THE COURT: All right. And I will ask Ms. Haynes a
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     question, please.
           Ms. Haynes, is this the complete sentencing agreement that
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     you all have reached with Mr. Regan?
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           MS. HAYNES: It is, Your Honor.
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           THE COURT: And Mr. McCarthy just said that the draft
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     that's before me probably was available to him on Monday, and he
     took that to Mr. Regan on Monday. Is that about right, according
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     to your recollection?
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           MS. HAYNES: Your Honor, I can't remember precisely when
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     we provided that to Mr. McCarthy. I thought it was more recently
11
     than that, but I think he has a better recollection of that than
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13
     I do.
           THE COURT: But the substance of it --
14
           MS. HAYNES: -- But the terms we have been speaking about
15
     for ten days, roughly, as Mr. McCarthy referenced.
16
17
           THE COURT: Okay. All right. And this is the complete
     agreement that you reached with Mr. Regan and his counsel?
18
19
           MS. HAYNES: It is the complete agreement.
            THE COURT: All right. Thank you. All right, Mr. Regan,
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     I have asked you a lot questions. You believe you understood all
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22
     my questions?
23
            THE DEFENDANT: Yes.
24
            THE COURT: Do you have any questions for me?
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            THE DEFENDANT: No.
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THE COURT: All right. Let the record reflect the Court's questioned Mr. Brian Patrick Regan and reviewed with him the sentencing agreement, and the Court finds that Mr. Regan is competent; that the agreement has been explained to him; that he [has been] is informed of his rights and he understands his rights, and he understands the nature of the rights he has to appeal the case to the Court of Appeals and the United States Supreme Court; he's been informed of his right to bring a petition for a writ of habeas corpus, and that he is waiving his right to bring any challenge to the legality of the detention on any Constitutional grounds; that he understands that the sentencing agreement calls for a sentence of life, and that there is no parole or any lesser sentence than the rest of his natural life that he will serve; that the -- that he's been fully informed of his rights to appeal any issue that may have arisen during the trial; and that he also acknowledges that his lawyers have adequately and effectively represented him and that he has no complaints with his lawyers, so the Court finds that the sentencing agreement is knowingly and intelligently made, and he understands the consequences of it; that the facts supporting it have been set forth to Mr. Regan by his counsel; that Mr. Regan has had at least ten days to consider the prudence of entering into this agreement; that he's had since Monday of this week an opportunity to sit down with his counsel and review the sentencing agreement and three days more to reflect on the prudence of entering into it; that he understands

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the consequences of it and the restrictions set forth, and the
Court finds that the agreement will be accepted as a knowing and
intelligent waiver of his rights as enumerated in the sentencing
agreement, so I'll accept it. Does the government want to be
heard on sentencing in this case? You can step back now.
      MS. HAYNES: No, Your Honor.
      THE COURT: All right. Is there anything that the defense
counsel wants to say before sentencing the defendant?
      MR. McCARTHY: Nothing to add to the agreement, Your
Honor.
      THE COURT: Mr. Regan, is there any statement that you
want to make on your own behalf?
      THE DEFENDANT: Yes, Your Honor. I'm truly sorry for my
actions, and I never meant to harm anyone, and I never attempted
to harm the United States. I feel a life sentence is excessive
in my case. I never harmed anyone. I never killed anyone. I'm
going to serve more time than any other spy ever, and my actions
come nowhere near any of those. I'm entering into this to
protect my wife and children from anymore pain and suffering, and
I hope one day that the government will reconsider the sentence
and show some mercy so that I can spend the last few years of my
life with my children. Thank you.
      THE COURT: Mr. Regan, do you understand that there is no
reconsideration of your sentence under this agreement?
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THE DEFENDANT: Yes, sir. If the law was ever changed,

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     no?
           THE COURT: No.
2
           THE DEFENDANT: Nothing?
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                                                          [make vou're]
           THE COURT: Are you clear on that? I want to make sure
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     you're absolutely clear. Today, if I impose a life sentence,
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     that's it, from now on. Do you understand that?
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           THE DEFENDANT: Yes, sir.
           THE COURT: Now, you just said that you had questions
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     about whether or not the sentencing is disproportionate to
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     others. You don't have to accept this if you don't want to enter
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     into it.
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           THE DEFENDANT: I can't hurt my family anymore, and I have
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     to.
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           THE COURT: Well, I just want to make sure you're clear
     that --
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           THE DEFENDANT: Yes, Your Honor --
           THE COURT: -- that no one has any interest in forcing you
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     to do something that you don't want to do.
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19
           THE DEFENDANT: Yes.
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           THE COURT: Is this what you want to do?
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           THE DEFENDANT: Yes.
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           THE COURT: Are you sure of it?
           THE DEFENDANT: Yes. If it wasn't that they were going to
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     prosecute my wife, I wouldn't, but they are, so I must.
           THE COURT: Well, Mr. Regan, I'm not going to try to talk
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you out of entering into this sentencing agreement.
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           THE DEFENDANT: I understand.
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           THE COURT: And I want to be absolutely clear on the
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     record, as I started this out, that you have to be clear that
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     this is what you want to do.
           THE DEFENDANT: Yes, Your Honor.
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 7
           THE COURT: And I'm sure Mr. McCarthy has discussed with
 8
     you your rights as relates to your wife's circumstances.
 9
     you done that, Mr. McCarthy? I'm sure you have.
10
           MR. McCARTHY: Yes, sir.
11
           THE COURT: Mr. Regan, in the face of your previous
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     statements that you wanted to enter into this agreement and my
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     acceptance of it, I am prepared to go forward with your
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     sentencing at this time, unless you tell me there's some good
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     reason not to, or if you tell me you don't want to enter into
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     this agreement.
17
           THE DEFENDANT: No, Your Honor.
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           THE COURT: And do you want me to sentence you under this
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     agreement?
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           THE DEFENDANT: Yes.
           THE COURT: Ckay. Mr. Regan, let me start out by saying
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     that I've had a chance now to review this case completely, and I
     sat through the entire trial where I saw witnesses testify about
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     what you did or did not do, and a jury verdict clearly states
25
     that you attempted to commit espionage against the United States,
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and it was very troubling to me to find out that it appears that this conduct began while you were in uniform in trust and service to your nation, and it's obvious that your statements today and the sentencing agreement reflect that you betrayed your country's trust, and you were serving in the Air Force and designated working with classified information, and not everyone is given the opportunity to be trusted with our nation's secrets and foreign intelligence and national defense information, and so your betrayal here harms the nation's security, it harms the people in the intelligence community who are trying to adhere to their oath and to obey the law, and to secure our nation's security.

It is true that maybe the information you were convicted of attempting to sell here, maybe it's true that it did not cause any harm, but I, having sat through the trial, am not persuaded that it didn't cause any harm. I'm persuaded it caused some harm. Perhaps it did not cause the death of some individuals as other espionage cases in this court have, but it certainly caused some harm, and there's no doubt that your attempted espionage put our nation's intelligence gathering at risk and put our intelligence collection at risk.

I find that your deliberate disloyalty and your reckless actions are a disgrace to the uniformed men and women who serve in our nation's armed services, and that you would do this is a colossal act of dishonesty to your nation, to your country, and

to your family. And I think now you have joined a list of 1 infamous spies who have caused some harm to our national defense 2 and glory, and it's no consolation that the harm that you caused 3 4 is, perhaps, less than others in your view or anyone else's; it 5 is still wrong and it is still harmful. I make no comment about 6 the length of the sentence because it appears to be a product of your own conscious decision to enter into this agreement, and 7 8 your reasons for entering into it are certainly understandable. 9 So, as a consequence, based upon the agreement entered 10 into by the parties, it's the judgement of the Court that you be committed to the Bureau of Prisons for the rest of your natural 11 12 life, and you are remanded into custody at this time. Thank you. 7.3 (Proceedings adjourned.) 14 CERTIFICATE 15 16 I, Scott L. Wallace, RDR-CRR, certify that the foregoing is a correct transcript from the tape 17 recorded record of proceedings in the above-entitled matter. 18 19 /s/ Scott L. Wallace **3**/16/20 20 Scott L. Wallace, RDR, CRR Date Official Court Reporter 21 22 23 24 25